IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.55 OF 2006

Dilip Kumar Jindal ...Appellant

Vs.

Justin S. D'souza & Ors. ...Respondents

None for the Appellants
Mr. P.M.Havnur for the Respondent No.1.

CORAM: A.S.OKA, J.
DATED: MARCH 18,2006.

P.C.:

1. On 10th March 2006, the submissions of the Advocates appearing for the parties were fully heard. I indicated to the Advocates for the parties that I intended to admit the Second Appeal on the following questions of law :

i) Whether the Respondent No.1/Plaintiff could have succeeded in a suit for removal of encroachment without establishing his title ?

ii) Whether the Respondent No.1 can be said to have established his title without producing and proving the original title deed on which he was relying upon ?

iii) Whether the findings recorded by the Trial Court and the Appellate Court are perverse ?

2. On the request made by the learned Advocate for the

Respondent No.1, the order was not passed on that date. Yesterday the papers of the said Appeal were produced before me when the Advocate for the Respondent No.1, on the instructions of the Respondent No.1 who was stated to be present in the Court, submitted that instead of admitting the matter and keeping it pending in this Court, by setting aside the impugned Judgments and Decrees the suit may be remanded to the Trial Court with permission to both the parties to lead further evidence. The submission of the learned Counsel for the Respondent No.1 is reasonable. As the Respondent Nos.2 and 3 are the formal parties, the course suggested by the learned Counsel for Respondent No.1 can be adopted without issuing notice to the formal parties. The Respondent No.3 is not a party to the suit.

2. Hence, I pass the following order :

i) Impugned Judgments and Decrees passed by the Courts below are quashed and set aside.

ii) Regular Civil Suit No.273 of 2001 is restored to the file of the learned Civil Judge (J.D.), Vashi.

iii) The parties will appear before the learned Trial Judge on 10th April 2006 for fixing the schedule of hearing. The Advocate for the Appellant will intimate the Respondent Nos.2 and 3 about this order by sending them a true copy of this

order by Registered post A.D. The Trial Court will also issue notice to the Defendant No.2

iv) The Trial Court will permit both the parties to lead further evidence. The Trial Court will decide the suit as expeditiously as possible and preferably on or before 31st December 2006.

v) All contentions of the parties on merits are expressly kept open.

. Second Appeal is partly allowed in above terms.

. The parties and the Trial Court will act upon an authenticated copy of this order.

Judge.